IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.19523 of 1997

Dated: 08-02-2007

Between:

1. The Officials Club, Regd. No.558/92, Tanuku,
West Godavari District,
rep. by its President Y. Narayana Rao Chowdary,
s/o Satyanarayana,
aged about 78 years,
r/at Tanuku town,
West Godavari District and another.

... Petitioners

and

1. The Government of Andhra Pradesh,
rep. by its Secretary,
Revenue (ASN.I) Department,
Secretariat Buildings,
Hyderabad and 2 others.

... Respondents

ORDER:

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This writ petition is filed seeking *mandamus* to declare the orders passed by the Government in G.O.Ms.No.258, Rev. (ASN.I) Department, dated 01-04-1997, canceling the lease of the land in an extent of 2562.37

square meters in R.S.No.55/1 and 92 of T. Vemavaram, Tanuku Mandal, West Godavari District to the petitioner-Club for thirty years, and also the order, dated on 28-07-1997 passed by the Government, as arbitrary, unconstitutional and contrary to the Board Standing Orders.

2. Facts, according to the affidavit filed in support of the writ petition, in brief, are--

(a) First petitioner is the President and Second petitioner is the Secretary of the Officials Club, which was registered under the provisions of the Societies Registration Act, 1860 on 26-12-1969, with registration No.119 of 1969. The Club is situated in a building bearing Dr.No.19/51 in R.S.No.55/1, M.C. in an extent of 2562.37 square meters. Initially, the Government authorities provided a vacant poramboke site covered by R.S.No.55 and 92 of T.Vemavaram village, which was situated at a very low level consisting of pits and waterlogged portion, and the said area is appurtenant to the Government buildings like Taluk Office, Sub-Jail, Police Station, Fire Station, Magistrate Court and Munsif Court. The Executive Committee of the Club after spending considerable amounts for filling up the pits and leveling of the land, had applied to the authorities concerned to grant permission for construction of a pucca building for locating the Club therein, in the year 1970 and accordingly permission was accorded. The Gram Panchayat also approved the plans and permitted for construction of a building on the said site in D.Dis.No.1205 of 1970, dated 29-09-1970.

(b) In the year 1986 the first petitioner had applied to the respondent authorities for grant of permanent assignment of the land covered by R.S.No.55/1, out of a total extent of Ac.3-24 cents or to grant atleast a long-term lease for 30 years. Later, based on the report of the District Collector, Eluru and the recommendations of the Commissioner of Land Revenue, as well as the District and Sessions Judge, Eluru, the

Government issued G.O.Ms.No.994, Rev. (ASN.I) Department, dated 07-10-1989 granting lease in favour of the petitioner-Club for a period of 30 years in an extent of 2562.37 sq. metres in R.S.No.55/1 at Tanuku, subject to the conditions laid down therein and directed the third respondent – District Collector to take necessary action accordingly. As per the said orders, petitioners have complied with condition Nos.1 and 2 viz., raising of compound wall to a length of 150 yards and also straightening of the wall on the southern side at 'XX' on the sketch appended to G.O.Ms.No.994, by spending considerable amount, i.e. more than Rs.1,00,000/-, on the suggestions and under the supervision of the judicial officers at Tanuku.

(c) The petitioner-Club has been representing to the Government as well as the judicial officers to fix the lease amount as they are prepared to pay the said amount to the authorities. The District Collector, Tanuku in his letter in Roc.B.3.11476/93, dated 27-04-1994 fixed rent at Re.1/- per square yard subject to the usual conditions as the Club is a non-organization and non-profit-making body and the matter was pending consideration for some time before the Government. Later, based on the recommendations of the judicial officers of West Godavari District, the first respondent – Government decided to fix rent at Re.1/- per square yard per annum in consultation with all the authorities concerned. The Club has been functioning in accordance with the conditions laid down by the Government and there are no complaints whatsoever from any quarter at any point of time.

(d) While so, in the month of March, 1996 the petitioners received a show cause notice from the District Judge, Eluru calling upon them to submit explanation as to why action shall not be taken against them for their eviction from the premises on the alleged ground that the Club has given an undertaking to vacate the premises unconditionally as and when the premises is required by the judicial department. Immediately,

the petitioners submitted explanation to the said notice and requested the authorities concerned to drop the proposed action stating that they have fully complied with the orders of the Government and the directions of the judicial officers as well as the directions of the High Court, which is the Head of department of State Judiciary, by raising permanent compound wall and fixing a gate as suggested and laying gravel road to connect it to the main road by investing huge amounts.

(e) After submission of the said explanation and at the time when petitioners were thinking that the said proposal of eviction would be dropped, they were served with a notice issued by first respondent vide Memo No.27452/ASN.I(i)/90/15, dated 11-07-1996 calling upon them to submit explanation as to why the lease granted by the Government in G.O.Ms.No.994, Rev. Dept. dated 07-10-1989 should not be cancelled for violation of condition (3) of the G.O. within 15 days from the date of receipt of the notice. It appears that the said memo was issued pursuant to a representation made by an alleged association viz., “Poura Hakkula Rakshana Samithi, Tanuku” to the High Court alleging that the Club was being run by some unworthy and antisocial elements since a long period in the campus of the Government offices. After receipt of the said notice, petitioners approached the respondent authorities and requested them to withdraw the notice as the Club did not involve itself in any unworthy or antisocial activities and has been running since 1970 by the State, Central Government employees, retired employees and employees of public and private sector undertakings, but not by any unworthy or antisocial elements. In spite of that, the first respondent – Government issued G.O.Ms.No.258 Rev. (ASN.I) Dept., dated 01-04-1997 canceling the lease granted to the petitioner-Club earlier, on the ground that petitioners have violated condition No.3 in G.O.Ms.No.994, Rev. (ASN.I) Dept., dated 07-10-1989 and directed the District Collector, to evict them from the premises and handover vacant possession of the site to the

judicial department.

(f) Questioning the said G.O., dated 01-04-1997, petitioners approached this Court by way of writ petition being W.P.No.8134 of 1997. Simultaneously, petitioners along with their local M.L.A., also made a representation to the first respondent – Government and the Minister of the department concerned, requesting them to reconsider the earlier G.O., dated 01-04-1997 in the interests of the Club. It is stated that the Government assured that their representation would be considered and with a hope of getting relief from the Government, petitioners withdrew W.P.No.8134 of 1997 on 11-06-1997 reserving their right to file a separate writ petition in case the Government failed to consider their representation. But, the first respondent – Government served an order, dated 28-07-1997 rejecting their request to reconsider the G.O., dated 01-04-1997. Challenging the said orders, the present writ petition has been filed.

(g) It is stated that the Club was started as long back as in the year 1970 and permanent buildings were constructed by spending lakhs of rupees after taking permission of the authorities concerned including judicial authorities and the Club has been running all its activities lawfully and its activities have not affected or caused hindrance either to the public or to the departments of Government. In such circumstances, if the Club is evicted from the existing premises, all its members will be put to irreparable loss.

2. Respondents 1 to 3 filed counter affidavit denying the averments mentioned in the affidavit filed in support of the petition and stated that in G.O.Ms.No.994, Revenue, dated 07-10-1989 orders were issued leasing out the land in question for a period of 30 years, subject to the conditions (i) that the boundary of the club on the southern side may be straightened as shown at 'XX' on the sketch; (ii) that once in ten years Government/Collector may revise the rent; and (iii) that Government may

reserve the right to cancel the lease, if the club is not run on the lines approved by the Government or indulge in antisocial activities prejudicial to public, the interests of Government or its approved policies. It is stated that Poura Hakkula Rakshana Samithi, Tanuku in their representation, dated 24-02-1996 has brought to the notice of the High Court that an official club is being run in Tanuku town by some unworthy and antisocial elements since a long period in the campus of Government offices and that no government officer is a member of that Club and that police had raided the Club and arrested some gamblers. Since the Club authorities have violated condition No.3 of G.O.Ms.No.994, Revenue Department, dated 07-10-1989, the High Court addressed the Government to revoke the orders granting lease to the Club and directed the District Judge, Eluru to take steps for eviction of the Club in view of the undertaking given by petitioners originally to the then District Judge, Eluru to vacate the premises as and when required by the judicial department. In the circumstances stated above, the Registry of the High Court requested the Government to issue immediate instructions to the Collector, Eluru to evict the Club authorities and handover possession of the site together with buildings to the judicial department immediately without any further delay. After careful examination of the matter, in consultation with the law department, and also after obtaining the views of the High Court on administrative side, Government issued G.O.Ms.No.258, Revenue, dated 01-04-1997 canceling the lease granted in G.O.Ms.No.994, Revenue, dated 07-10-1989 for violation of condition No. 3 of G.O.Ms.No.994. The Registrar (Management) in his letter dated 26-08-1997 has also informed that the representation of Sri M.V. Krishna Rao, M.L.A., Tanuku Assembly Constituency submitted to the Hon'ble Chief Justice of the High Court for canceling the above G.O. deserves no consideration as there are no extraordinary or good reasons in the said representation.

3. In his detailed counter affidavit, fourth respondent while denying the averments mentioned in the affidavit filed in support of the writ petition contended as follows--

(a) The Tahsildar, Tanuku addressed a letter, dated 29-12-1969 to the District Judge, West Godavari, for allotment of site in an extent of 1000 square yards to start Officials Club at Tanuku. At first instance, it was rejected by the District Judge, vide his order, dated 31-01-1970 stating that it is required for extension of existing court buildings, namely, construction of Sub Court building, parties shed etc. However, subsequently based on the undertaking, dated 16-02-1970 given by the members of the Club to the effect that in the event of extension of Sub Court building, they would unconditionally handover the building and the site to the authorities without any claim for compensation for the building or for improvement made to the site, the District Judge addressed letter, dated 04-03-1970 to the Tahsildar, Tanuku, stating that in view of the undertaking given by the Club, the judicial department has no objection to alienate 1000 square yards of site to the Officials Club, Tanuku. Thus, petitioners were permitted by the District Judge to locate the Club in the court premises in an extent of 1000 square yards only on the above undertaking and subject to the condition that the Club has to erect small temporary building for indoor games as stated in the undertaking.

(b) Further, for construction of compound wall around the Club premises, the club addressed a letter, dated 27-01-1976 to the District Judge seeking permission to construct compound wall stating that the Club unconditionally undertakes to remove or demolish the wall constructed, whenever required for expansion of Sub Court, Tanuku and further undertakes to hand it over to the judicial department without claiming any compensation on the said wall or any other improvements made to the wall. Even though the District Judge has not given any permission on their application, the petitioners indulged in construction of

compound wall stealthily in January, 1977. The Club authorities also indulged in unauthorized activities in the Court premises in the year 1983 by putting up cement poles behind the Court of Principal District Munsif with an intention to give electric connection from the Club to the poles in order to use the Court premises as a passage to enter the Club by the members.

(c) In fact, the High Court which is the Head of Department of State Judiciary insisted for eviction of the Club from the court premises right from the year 1984, if necessary, by taking coercive proceedings for eviction as per the letter, dated 19-06-1984 addressed to the District Judge, West Godavari. The District Judge in turn addressed a letter to the Collector, dated 28-07-1984, stating that the Club comprises mostly non-official elements and it is located within the compound of the District Munsif Court by encroaching upon an extent of nearly Ac.1-00 cents of valuable site belonging to the judicial department. The District Judge also issued a reminder in this regard to the Collector, vide letters, dated 16-08-1984 and 14-12-1984. In his letter dated 14-12-1984, the District Judge stated that the club authorities sent a reply to the notice of eviction issued by him wherein they requested him to give them reasonable time to approach the Government for obtaining permanent assignment of the encroached site in their favour. But, it is stated that no such permanent assignment can be given in favour of the Club,
when the said site is earmarked to the judicial department and is essentially needed for its departmental purpose.

(d) It is further contended that the Club cannot claim that there is enough space in the Court premises and the judicial department does not require the site in question, especially when the High Court is of the opinion that it is required by the judicial department. The Club is not competent to decide about the necessity of this land by the judicial department and its opinion in this regard is irrelevant. The lease granted

by the Government in respect of the land, which is in possession and control of the judicial department is illegal and *ultra vires* of their powers and *abinitio* void.

The Club cannot claim any sort of rights under the said lease. The contention that the Government is paramount titleholder and therefore, can lease out the land to the Club, has no relevance in the present case as the land is in possession and control of the judicial department, which is a separate wing of the Government and not a part of the Executive. The action of the Government in leasing out the land, which is in possession of the judicial department, without the consent of the High Court is arbitrary, highhanded and thus cannot create a valid lease in favour of the Club. The grant of lease by the Government in this case is illegal and unconstitutional and the same amounts to highhandedness and interference with the sovereign and independent functioning of the judiciary as provided by the Constitution of India, apart from affecting the dignity and decorum of the Court. The granting of lease itself is void and in-operative, and in the circumstances cancellation of the same by G.O.Ms.No.258, dated 01-04-1997 is justified. The petitioner-Club does not get any vested right under a void lease.

4. In the additional counter filed on behalf of the respondents 1 to 3, it is contended that in the teeth of the unconditional undertaking by the Club to the effect that they will vacate the premises as and when the land is required by the judicial department, the contentions raised by the Club that no opportunity is given to it, cannot be sustained. Admittedly, the Silver Jubilee function of the Club was held on 08-05-1994; the building was inaugurated on 25-09-1970; and it was extended without any manner of right contrary to the understanding. However, the District Judge issued a show cause notice on 17-01-1996 stating that the site is required by the judicial department and requested to vacate the premises and handover the building to the Sub Judge, Tanuku within 30 days from

the date of receipt of notice, failing which steps will be taken without any further reference in the matter. To the said notice, petitioner-Club submitted an explanation on 16-02-1996 wherein it was admitted that the Silver Jubilee Celebrations were made after 25 years. Hence, the contention that lease will be extended for 30 years is wholly unsustainable. Further, on receipt of the explanation, the District Judge issued second show cause notice on 25-03-1996 to the petitioners to vacate and deliver vacant possession as the site is urgently required by the judicial department, making it clear that there is no ground to reconsider the matter in view of the undertaking given by the club authorities to handover possession along with the building as and when required without claiming any compensation. To the said notice also the club authorities gave a representation on 05-04-1996 to the District Judge and the Government issued show cause notice on 11-07-1996 wherein it is made clear that the District Judge has requested to vacate and handover possession of the building to the judicial department in view of the undertaking given by the club without claiming any compensation and the representations made by the club authorities have also been rejected by the Registry of the High Court as there is no ground to reconsider the matter. In addition to that there is a complaint from “Poura Hakkula Rakshana Samithi”. Taking into consideration of the complaint and keeping in view of the explanation submitted and the representation made by the Club authorities, orders were passed by the Government by issuing G.O.Ms.No.258, dated 01-04-1997. The said order was questioned by filing W.P.No.8134 of 1997 and the same has been withdrawn on the premise that the Government will consider the request of the Club authorities, and the Government after considering the circumstances and the need of the judicial department, orders were passed cancelling the lease and directions were issued to vacate and handover possession in view of the undertaking given by the Club

authorities.

5. Two separate reply affidavits to the counter affidavits filed on behalf of the respondents 1 to 3 & 4 respectively, as well as a rejoinder affidavit have been filed on behalf of the petitioners. In the said affidavits, while denying the counter averments, it is mainly contended that the moment G.O.Ms.No.994 was passed, the judicial authorities are out of the purview of the subject matter and that they cannot exercise any powers of landlord over the petitioners and it is only the Government that is competent to deal with the matter. As such the show cause notices issued by the fourth respondent on 17-01-1996 and 25-03-1996 are not valid in the eye of law, but yet they have issued proper replies to the said notices to the fourth respondent out of respect towards judiciary, while making their stand very clear regarding the nature of their possession and the ownership of the land. It is further contended that the High Court has influenced the Government by exercising its power and made the Government to issue a notice to quit/show cause notice, dated 11-07-1996 to the petitioners. It is also contended that the show cause notice dated 25-03-1996 of the fourth respondent, which is subsequent to the alleged representation of Poura Hakkula Rakshana Samithi does not disclose anything about the said representation and as such the very existence and correctness of the said representation has to be doubted or to be viewed with a suspicion, and so far the said representation has not seen the light of the day. It is further contended that the High Court, which has taken care to address letter to the Government on 08-04-1996 has not taken care either to enquire into the matter on the representation dated 24-02-1996 of Poura Hakkula Rakshana Samithi, on its own or to direct the Government to conduct an enquiry into the matter by giving reasonable opportunity to the petitioners. The first respondent has also thoroughly failed to furnish a copy of the said alleged representation to the petitioners, enabling them to give proper explanation to the show

cause notice, dated
11-07-1996 and the Club authorities also gave a proper explanation to the show cause notice, dated 11-07-1996 in the same lines on 17-07-1996 to the Government as they used to send representations previously to the High Court and District Court thinking that they were again asked to vacate the premises by the respective authorities. The Club has not violated the conditions of G.O.Ms.No.994, dated 07-10-1989 at any point of time and there are no criminal antecedents against the Club or its members at any point of time.

6. Heard learned counsel for petitioners, learned Government Pleader for Assignment appearing for the respondents 1 to 3 and learned standing counsel for the fourth respondent.

7. Several elaborate factual aspects have been placed before this Court by way of affidavit filed in support of the writ petition, counter affidavits, additional counter affidavits and reply affidavits.

8. Facts, which are not in dispute, are: Initially the Government was the absolute owner of the land in question and about more than fifty years back, the same was earmarked to the judicial department at Tanuku for construction of court buildings. In the said site, primarily District Munsif Court and its office alone were located and the remaining land was kept vacant.
In the year 1969 or so when petitioners addressed a letter to the District Judge, Eluru seeking permission to use the land in question for the purpose of recreation, the District Judge initially rejected it. But, subsequently, based on the unconditional undertaking given by petitioners to the effect that they will vacate the said premises as when required by the judicial department for extension of its buildings, court-halls and for construction of quarters etc.,

the District Judge in his letter, dated 04-03-1970 expressed that judicial department has no objection to alienate 1000 square yards to petitioner-Club. However, the fact remains, based on the unconditional undertaking given by petitioners, the District Judge, Tanuku informed the Tahsildar, Tanuku, vide letter, dated 04-03-1970 that judicial department has no objection to alienate 1000 square yards to the petitioner-Club. Basing on the same, the Government issued G.O.Ms.No.994, dated 07-10-1989, granting lease in favour of the petitioners to an extent of Ac.2562.37 square yards in R.S.No.551/1 for a period of thirty years with certain conditions.

9. Learned counsel for petitioners contended that the moment G.O.Ms.No.994, dated 07-10-1989 was issued leasing the land in question in favour of the petitioner-Club, the judicial department is out of the purview of the subject matter. Inasmuch as the land in question was earmarked to the judicial department by the Government long back for construction of its buildings, court halls, party sheds etc., simply because the District Judge, Eluru based on the unconditional undertaking given by petitioners, expressed that his department has no objection to alienate 1000 square yards to petitioners for recreation and merely because the Government issued G.O.Ms.No.994, dated 07-10-1989 leasing out the land belonging to the judicial department in favour of petitioners for a period of thirty years, petitioners cannot contend that the moment G.O.Ms.No.994 is passed the judicial authorities are out of the purview of the subject matter and that the judicial department cannot exercise any powers of landlord over the petitioners and it is only the Government that is competent to deal with the matter. Similarly as and when the property in question was earmarked to the judicial department at Tanuku long back for construction of its court buildings etc., as rightly contended by learned standing counsel appearing for fourth respondent, the Government has no right even to lease out the said land in favour of

petitioners.

10. Learned counsel for petitioners further contended that at the time of petitioners entering into the land in question, it was full of pits and they spent lakhs of rupees for filling up pits, leveling the land and for construction of its building and if they are evicted the interests of the members of the Club will be jeopardized. Merely because the petitioners have spent huge amounts for filling up of pits, leveling of land and construction of the Club building and walls, the same is not a ground to seek either for continuation or extension of the lease, because the lease in question was granted to the petitioner-Club based on the unconditional undertaking given by the petitioners to the effect that they will vacate the premises as and when the premises is required by the judicial department, without claiming any compensation.

11. The other contention raised by learned counsel for petitioners is that though petitioners have given an unconditional undertaking to the District Judge, Eluru, as and when the G.O.Ms.No.994, dated 07-10-1989 was issued leasing out the land in question in favour of petitioner-Club for a period of thirty years, there exists the jural relationship of landlord and tenant and therefore the provisions of Transfer of Property Act, or the provisions of Andhra Pradesh Government (Buildings & Lands) Termination of Lease Act, 1986 would apply to the facts of the case, and that no notice as contemplated under the said Acts is given before passing the impugned G.O., cannot be taken into consideration for the simple reason that petitioners were granted lease based on the letter of the District Judge, Eluru to the effect that judicial department has no objection to alienate 1000 square yards to the petitioner-Club as per the unconditional undertaking given by petitioners and that since the District Judge, Eluru contends that the lease of the land in question in favour of petitioner-Club by the Government itself is ultra vires and void abinitio.

12. So far as the violation of condition No.3 of G.O.Ms.No.994, dated 07-10-1989 is concerned, it is the contention of respondents that as petitioners have indulged in antisocial activities, which are prejudicial to public and the interests of the Government, the Government issued the impugned G.O. canceling the lease. In this regard, respondents relied on the representation dated 24-02-1996 given by Poura Hakkula Rakshana Samithi, Tanuku wherein it is stated that the Club is being run by some unworthy and antisocial elements since a long period in the campus of Government offices and that police also raided the Club and arrested some gamblers. On this aspect, it is the contention of learned counsel for petitioners that there is no such Samithi at Tanuku and if really there was any representation from the said Samithi, before passing the impugned G.O., there is a duty cast on the Government to serve a copy of such representation, call for the explanation of petitioners, conduct an enquiry and then only pass appropriate orders,

but the Government without calling for the explanation and without conducting enquiry passed the impugned G.O. As already discussed in the preceding paragraphs of this order, the lease in question was granted based on the unconditional undertaking given by petitioners to the effect that they would vacate the premises as and when required by the judicial department for construction of its buildings, court-halls etc. Further, since the judicial department at Tanuku requires the land in question for extension of its court buildings and also pursuant to the representation made by the said Samithi, the impugned G.O. was issued canceling the lease in favour of petitioners. Merely because petitioners were not served with a copy of the said representation, they have no right to contend that principles of natural justice is violated.

13. The other contention raised by the learned counsel for petitioners that there is some more vacant space and the same is sufficient for

extension of court hall buildings etc., also cannot be countenanced for the reason that they have no right to give advise whatsoever and it is the lookout of the department concerned where to construct its buildings on the land earmarked to it.

14. No doubt, Government is the absolute owner of the land and whenever it is required for any public purpose, it has got every authority to takeover possession. If a piece of land is assigned in favour of a particular individual or body, and if the same has to be taken possession of,

the same has to be done by means of resumption and if it is granted on lease, the same has to be done by canceling the lease. But in the case on hand the land in question was specifically earmarked to the judicial department long back for construction of its buildings, court-halls etc. Since there is a categorical undertaking given by the club authorities that they will vacate and deliver vacant physical possession of the land in question whenever it is required by the judicial department, the District Judge in view of the urgency and necessity of the land issued two notices requesting the club authorities to vacate and deliver the property. Therefore, the contention of the petitioners that they have got right to continue in the land in question cannot be sustained.

15. It may not be out of place to mention here that the action of the Government in leasing of the land, which is earmarked and is in possession of the judicial department and without the consent of the High Court on administrative side, which is the Head of the Department of the State Judiciary, is arbitrary, highhanded and it cannot create a valid lease in favour of the petitioner-Club. If the Executive is permitted to act as it likes in respect of the land given and in possession of the judicial department, without resuming possession, there is no sanctity for possession of any land by the judicial department. The Executive itself

cannot unauthorisedly enter into any transaction in respect of the land in question, which was allotted to the judicial department long back and is in possession of the judicial department. However, even though entering into the lease of the land in question by the Government with petitioners is void abinitio, as soon as the receipt of the letters addressed by the District Judge, Eluru and the letter of the High Court on administrative side, and also keeping in view the allegations mentioned in the representation given by Poura Hakkula Rakshana Samithi, Tanuku the Government has correctly and timely reacted, and passed the impugned G.O. canceling the lease in question.

16. On the above analysis, this Court is of the view that there is no arbitrariness and highhandedness in canceling the lease through the impugned G.O.

17. In the result, the writ petition is dismissed. However, the petitioners are directed to vacate the premises in question within three months from the date of receipt of a copy of this order. No costs.

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JUSTICE GOPALAKRISHNA TAMADA

Dt.08-02-2007
GLV